UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

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THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED AND BOURNE CO., ET AL., ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,,	)	
PLAINTIFFS, vs.	)	07 CIV. 3582(LLS)
YOUTUBE, INC., YOUTUBE, LLC AND GOOGLE, INC.,,	)	
DEFENDANTS.	)	
VIACOM INTERNATIONAL INC., COMEDY PARTNERS, COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, AND BLACK ENTERTAINMENT TELEVISION, LLC,	)	
PLAINTIFFS, vs.	)	07 CIV. 2103 (LLS)
YOUTUBE, INC., YOUTUBE, LLC AND GOOGLE, INC.,,	)	
DEFENDANTS.	)	

VIDEOTAPED DEPOSITION OF JIM PATTERSON
FRIDAY, DECEMBER 18, 2009
SAN FRANCISCO, CALIFORNIA
Job No. 18411

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YOUTUBE, INC., YOUTUBE, LLC AND GOOGLE, INC.,,	
DEFENDANTS.	

VIDEOTAPED DEPOSITION OF JIM PATTERSON, TAKEN ON BEHALF OF THE PLAINTIFFS, AT 9:05 A.M., WEDNESDAY, DECEMBER 16, 2009 AT 601 CALIFORNIA STREET, SUITE 1400, SAN FRANCISCO, CALIFORNIA BEFORE MARY JACKSON, CSR NO. 8688, PURSUANT TO NOTICE.

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ALSO PRESENT: ADAM BAREA, Counsel for Google

ARMANDO CARRASCO, Videographer

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SAN FRANCISCO, CALIFORNIA;

FRIDAY, DECEMBER 18, 2009, 9:05 A.M.

8:26 THE VIDEOGRAPHER: Today's videotaped deposition of Jim Patterson is taken on December 18th, 2009 at Girrard Gibbs LLP, 601 California Street Suite, 1400 San Francisco, California in the matter Viacom International versus YouTube, Incorporated. Case numbers are 07CV2103 and 07CV3582. In Court Southern District of New York. My name is Armando Carrasco. I represent David Feldman Worldwide located at 600 Anton Boulevard, Suite 1100, Costa Mesa, California.

9:06 We are now commencing at 9:05 a.m. Will all present please identify themselves beginning with the witness?

9:06 THE WITNESS: My name is Jim Patterson.

9:06 MS. REES: Maura Rees from Wilson Sonsini representing the YouTube defendants.

9:06 MR. BAREA: Adam Barea, Google, Inc.

9:06 MR. GALDSTON: Benjamin Galdston Bernstein, Litowitz, Berger & Grossman on behalf of the class plaintiffs.

9:06 MS. MAGUIRE: Sarah Maguire from Jenner & Block on behalf of Viacom.

9:06 MR. PLATZER: Luke Platzer from Jenner & Block on behalf of the plaintiffs in the Viacom action.

9:06 THE VIDEOGRAPHER: Thank you. Will the court reporter please swear in the witness.

9:06 JIM PATTERSON,

9:06 having been first duly sworn, was

9:06 examined and testified as follows:

9:06

9:06 EXAMINATION

9:06 MR. PLATZER: Q. Good morning. Can you please state your full name and address for the record please.

9:06 A. My name is Jim Patterson. I live at 88 Townsend in San Francisco.

9:07 Q. And you're employed by YouTube?

9:07 A. Yes.

9:07 Q. What is your position?

9:07 A. I am a group product manager is my title.

9:07 Q. And what are your responsibilities?

9:07 A. I coordinate product development activities around a subset of YouTube.

9:07 Q. And what -- what subset of YouTube do you coordinate product activities around?

9:07 A. At the moment, I am focused on ecommerce

it actually happens. You mentioned earlier that partners access YouTube videos through the Internet; is that correct?

9:55 A. Partners access the YouTube service through the Internet, yes.

9:56 Q. So YouTube stores the videos on its own servers and partners can then render those videos on their services or devices?

9:56 A. Yes.

9:56 Q. Has that always been the case for all partners?

9:56 A. Has which always been the case?

9:56 Q. That videos themselves remain posted on YouTube's own servers?

9:56 A. I believe that has almost always been true except for one very early case and then only on a very small scale.

9:56 Q. Was that Verizon?

9:56 A. Yes.

9:56 Q. And in the case of Verizon, did YouTube deliver copies of the videos to Verizon?

9:56 A. I believe, yes.

9:57 Q. During what time frame was that method of syndication used?

9:57 A. I believe it was around 2006.

9:57 Q. And about how long did it last?

9:57 A. I don't know for sure. I believe it was -- I don't know for sure. I can -- I can give you my sense, but I can't say authoritatively.

9:57 Q. Give me your sense please.

9:57 A. My sense is it's probably about six months.

9:57 Q. Okay. At that point -- at some point -- sorry strike that. At some point Verizon began accessing videos hosted on YouTube servers?

9:57 A. Yes.

9:57 Q. And are there any partners other than Verizon to whom YouTube delivered copies of the video for syndication?

9:57 A. I don't believe so.

9:57 Q. That wasn't the procedure used for Helio?

9:58 A. I don't believe so.

9:58 Q. Roughly how many videos did YouTube syndicate to Verizon?

9:58 MS. REES: Objection, vague as to time, vague as to syndicate.

9:58 MR. PLATZER: That's a fair -- that's a fair objection. Let me try to rephrase the question.

9:58 MR. PLATZER: Q. During the period of

believe it was late 2007.

10:31 Q. You've used the term automated to describe the process that was put into place after the manual selection. Can you explain what you mean by automated?

10:31 MS. REES: Objection, outside the scope to the extent you're asking for technical details, but again you can answer to your understanding.

10:31 THE WITNESS: When a partner provides or user provides a video to YouTube, that video needs to be stored by us in a combination of bits, and in order to deliver the YouTube service to make the YouTube service available to a number of different devices and over different Internet connection speeds, we transcode the video into multiple formats. And we do that automatically for each video.

10:32 Q. Okay. So at some point in time, YouTube began automatically transcoding every video that was uploaded to the YouTube service into a format that was appropriate to be accessed by a wireless device?

10:32 A. All or nearly all, yes.

10:32 Q. What about videos that were uploaded by users before YouTube began automatically transcoding all or nearly all uploaded videos into a format that

was appropriate for wireless devices? Did YouTube go back and transcode those as well?

10:33 A. I imagine -- my understanding is that now we are transcoding all or nearly all of the videos that have been uploaded to YouTube into multiple formats. So I believe the answer is yes.

10:33 Q. Just to be clear, I'm not asking about what happens when a user uploads a video.

10:33 A. Yes.

10:33 Q. I'm asking what happened to videos --

10:33 A. Yes.

10:33 Q. -- that users had previously uploaded. YouTube went back and transcoded those?

10:33 A. That is my understanding.

10:33 Q. Okay. And the users who uploaded those videos didn't prompt YouTube to do that?

10:33 MS. REES: Objection, calls for speculation, vague.

10:33 THE WITNESS: My understanding is that they were presented with a user interface that gave them the ability to choose whether or not it would also be available on mobile devices. So it's reasonable that they would have understood that that would be happening.

10:34 Q. Okay. But that interface, that was

presented to users who were up loading videos after YouTube started automatically transcoding everything that was uploaded, right?

10:34 MS. REES: Objection, vague.

10:34 THE WITNESS: Yeah, I don't know precisely when that user interface was introduced?

10:34 MR. PLATZER: Q. But users who uploaded videos before YouTube started automatically transcoding everything, that interface wasn't presented to them, right?

10:34 MS. REES: Objection. This is outside the scope and it's, again, vague.

10:34 THE WITNESS: I don't know. That would have been in the very early days of YouTube. And if YouTube had intended to make a mobile version available, if that had always been part of the plan and the vision, then that may very well have been part of the very early user interface.

10:35 MR. PLATZER: Q. Okay. So you just don't know either way --

10:35 A. Right.

10:35 Q. -- when that user interface became available?

10:35 A. Yeah.

10:35 Q. When YouTube started transcoding its back

catalog, were the videos prioritized in any way so that some category of videos were transcoded first?

10:35 MS. REES: Objection, outside the scope.

10:35 THE WITNESS: I imagine that they were. And this -- this Exhibit 3 that you've provided suggests they were.

10:35 MR. PLATZER: Q. But do yourself have any knowledge --

10:35 A. No.

10:35 Q. -- of -- do you know by when -- by what point in time was the entire YouTube library made available in several formats?

10:36 A. I don't know authoritatively when we launched the mobile website with a full catalog. So I estimate that that was true or approximately true by late 2007.

10:36 Q. Okay. And do you know when YouTube started the process of transcoding its back catalog?

10:37 A. No.

10:37 Q. And we been talking so far about transcoding of the library into format for wireless carriers. Was a different format used for set top device boxes that -- to whom YouTube syndicated videos?

10:37 A. Videos were transcoded into multiple

formats. Most formats are used or accessible by different categories of devices. So I'm not quite sure how to answer your question. I don't know of any formats that were created, or any specific transcodes that were made specifically for televisions or set top boxes.

10:38 MR. PLATZER: This is another logical break in the questioning. Another good time to take a break?

10:38 MS. REES: Sure.

10:38 THE VIDEOGRAPHER: Now going off the record. The time is 10:38 a.m.

10:45 (Whereupon a recess was taken.)

10:46 THE VIDEOGRAPHER: We are now back on the record. The time is 10:45 a.m.

10:46 MR. PLATZER: Q. Do want to do a little bit of followup on the last topic before we move on to the next subject area.

10:46 But to recap, at some point in time, you manually selected all the videos that it made available on its mobile site.

10:46 MS. REES: Objection, vague and misstates testimony.

10:46 THE WITNESS: Yes, very small number of videos, yes.

10:46 MR. PLATZER: Q. Those videos were also syndicated to YouTube wireless partners at the time?

10:46 MS. REES: Objection, misstates testimony.

10:46 THE WITNESS: One partner at least, yes.

10:46 MR. PLATZER: Q. That partner was Verizon?

10:46 A. Yes.

10:46 Q. And at some point thereafter, YouTube made its entire library available to mobile carriers, correct?

10:47 A. Technically, YouTube has always made its entire library available to mobile carriers through the youtube.com website. So any mobile phone that has a sufficiently powerful browser can today and has always been able to visit youtube.com and see the full catalog.

10:47 Q. Okay. But maybe to ask the question more clearly, at some point after the manual carrier, YouTube made its entire catalog available to wireless carriers in a format that was deemed more appropriate for wireless phones?

10:47 A. Yes, that is correct.

10:47 Q. But you don't know when the manual selection period ended and the automatic period began?